IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5153 of 2000
WITH
CIVIL APPLICATION NO.7915 OF 2003
IN SPECIAL CIVIL APPLICATION NO.5153 OF 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAMLESHBHAI HARIBHAI PATEL - Petitioner(s)
Versus
COLLECTOR & 1 - Respondent(s)

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Appearance :
MR RN SHAH for the Petitioner.
Mr. Siraj Gori, Assistant GOVERNMENT PLEADER for Respondent no.1.
MR UI VYAS for Respondent no.2.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL
Date : 08/03/2006

ORAL JUDGMENT

The present petition has been preferred against the order dated 5th May, 2000 passed by the respondent

no.1, whereby the application preferred by the petitioner for getting non-agricultural permission under section 65 of The Bombay Land Revenue Code, 1879 has been refused. (Annexure “G” to the memo of the petition).

2. The learned advocate for the petitioner submitted that by a registered sale deed, the petitioner has become owner of the land in question. The said registered sale deed is at Annexure “A” to the memo of the petition. Now, the ownership has been vested in the petitioner in pursuance of the provisions of the Transfer of Property Act, 1882. Thereafter, the revenue record entries have also been mutated in favour of the petitioner. The said document is at Annexure “B” to the memo of the petition and at serial no. 3 for survey no. 333/2 paiki, admeasuring 2790 sq.mtrs. It is also submitted by the learned advocate for the petitioner that nonetheless, NA permission has been refused by the respondent no. 1 though there is a valid registered sale deed in favour of the petitioner. The mutation entry is also in favour of the present petitioner and therefore, the impugned order deserves to be quashed and set aside. It is also submitted by the learned counsel for the petitioner that suits have also been preferred by the original owners of the land in question. Likewise, one

more suit has been preferred by the petitioner against predecessor-in-title and therefore, without going into much details of the dispute as to the ownership, NA permission may be directed to be given by the respondent no. 1 which will be subject to the result and outcome of the suits which are preferred by the predecessor-in-title against the petitioner as well as by the petitioner against the predecessor-in-title of the respondent no. 2.

3. I have heard the learned advocate for the respondent no. 2 who has mainly submitted that the petitioner is not the owner of the disputed land and therefore, the respondent no. 2 has filed civil suits against the petitioner before competent court. Suits are pending before trial courts. Enough and adequate pleas have been raised against the petitioner so far as ownership is concerned. There is also a dispute as to the mutation entry which is recorded in favour of the petitioner and therefore, NA permission has been rightly refused by respondent no.1 considering objections raised by respondent no. 2. Nonetheless, if NA permission is granted by the respondent no.1 subject to the result of the suits, then it may serve the purpose of respondent no.2. In fact, the petitioner has already made construction in the nature of residential as well as

commercial construction and has also sold always the property in question to third parties and therefore, even without NA permission, non-agricultural use has been already started and therefore, if NA permission is sanctioned subject to the final result as to the dispute as to ownership, the purpose of respondent no.2 may be served.

4. I have also heard the learned Assistant Government Pleader for respondent no.1 who has submitted that because of the dispute of ownership in the land in question, NA permission was not granted under section 65 of the Code of 1879. Civil suits are pending before competent court. Ownership is not known to the Collector and therefore, NA permission has been refused. There is no illegality committed by the respondent no.1 and hence the petition deserves to be dismissed.

5. Having heard the learned counsel for both the rival parties and looking to the facts and circumstances of the case, in my view, the impugned order dated 5th May, 2000 passed by the respondent no.1 Collector deserves to be quashed and set aside for the following facts and reasons:-

(i) As per the submissions made by the learned advocate

for the petitioner as well as for respondent no. 2, in fact, there is already a construction upon the disputed land which is in the nature of residential as well as commercial.

(ii) Dwelling units as well as shops which have been constructed on the land in question by the petitioner have also been sold away by the petitioner to third parties and they are presently occupying residential as well as commercial premises.

(iii) It appears from the impugned order that the respondent no.1 has no other objection which is as to ownership of the property in question and mainly because suits have been preferred interse between the parties. The suits are pending before competent civil suits. Regular civil suit no.223 of 1995 and Special Civil suit no. 439 of 2000 are pending before Civil Court (S.D.), Vadodara. This suits are pertaining to ownership of the land in question. Therefore, knowing all these facts, NA permission could have been granted by the respondent no.1 subject to the outcome of the aforesaid two suits and dispute as to the ownership of the land in question.

6. Thus, in view of the peculiar facts and

circumstances of the case and as a cumulative effect of all the above, the impugned order dated 5th May, 2000 passed by respondent no. 1 Collector,Vadodara is hereby quashed and set aside. The respondent no.1 is directed to hear and decide the application preferred by the petitioner afresh within a period of two weeks from the date of receipt of writ from this Court. Civil Court (S.D.), Vadodara is also hereby directed to hear and decide Special Civil Suit no. 439 of 2000 and Regular Civil suit no.223 of 1995 as early as possible and practicable and preferably within a period of six months from the date of receipt of writ from this Court. Rule made absolute to the aforesaid extent with no order as to costs. Direct service permitted.

7. In view of the order passed in the Special Civil Application, Civil Application No.7915 of 2003 does not survive. Hence, Civil Application is also disposed of. Notice discharged.

(D.N.Patel,J)

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